100380

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

[redacted]

No. [redacted]30

KING COUNTY, WASHINGTON, APPELLANT,

vs.

SEATTLE SCHOOL DISTRICT No. 1.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

(28,796)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 841.

KING COUNTY, WASHINGTON, APPELLANT,

vs.

SEATTLE SCHOOL DISTRICT No. 1.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 29, 1922.

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Names and Addresses of Counsel.

MALCOLM DOUGLAS, Esq., Solicitor for Appellant,

431 County-City Building, Seattle, Washington.

HOWARD A. HANSON, Esq., Solicitor for Appellant,

431 County-City Building, Seattle, Washington.

HENRY W. PENNOCK, Esq., Solicitor for Appellee,

900 Leary Building, Seattle, Washington.

[1*]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

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*Page-number appearing at foot of page of original certified Transcript of Record.

Amended Bill of Complaint.

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Northern Division:

Seattle School District No. 1, King County, Washington, a municipal corporation of the State of Washington and having its principal office for the transaction of business in the city of Seattle, Washington, brings this its amended bill of complaint against King County, Washington, and William A. Gaines, Treasurer of King County, Washington, having their principal places of business in the city of Seattle, State of Washington, and thereupon the plaintiff complains and says:

I.

That the plaintiff is a School District duly organized and existing under and by virtue of the laws of the State of Washington.

II.

That the subject matter of this suit is a trust fund [2] created by Act of Congress and involves the construction of said Act of Congress.

III.

That the question involved herein is one of common interest to all School Districts in King County, Washington; that inasmuch as it would be impracticable to bring all of said School Districts before the Court, the plaintiff has brought this suit for and on behalf of itself and for and on behalf of all other School Districts in the said county who may elect to join with the plaintiff herein.

IV.

That under an Act of Congress approved March 4th, 1907 (Federal Statutes Annotated Sup. 1909, p. 665), the Secretary of the Treasury was directed to pay to the Treasurer of the State or Territory in which any forest reserve was situated, 10% of all moneys received by the United States from such forest reserve during any fiscal year including the year ending June 30th, 1906. It was further provided by said act that the money so paid to the State Treasurer be expended as the State or Territorial Legislature may prescribe, for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated; that by an Act of Congress approved May 23d, 1908, it was made the duty of the Secretary of the Treasury to pay to the State or Territorial Treasurer 25% instead of 10% of the amount received from forest reserves in any county or counties in such state, to be expended in the same manner as directed by the Act of March 4th, 1907. That by the same Act of May 23d, 1908, it was provided that when any forest reserve is in more than one state or territory or county, the distributive share to each from the proceeds of such forest reserve should be proportional to its [3] area therein.

That after the approval of said Act of Congress of March 4th, 1907, the Secretary of the Treasury remitted to the State Treasurer of Washington, annually, the proper proportional amounts of the proceeds of the sale of timber from the forest reserves within the State of Washington. That on

the 15th day of March, 1907, there was approved by the Governor of the State of Washington, an Act passed by the Legislature of said State directing the State Treasurer to turn over to the Treasurers of the respective counties within the forest reserve, the amount of money belonging to such county received from the Federal Government from such forest reserve, in accordance with the Act of Congress aforesaid. The Treasurer was further authorized and required to obtain the necessary information to enable him to distribute the moneys in proportion to the area of the several forest reserves in the respective counties of the state; that by the same Act the County Commissioners of the respective counties to which the moneys were required to be distributed were authorized and directed to expend the same for the benefit of the public schools and public roads thereof and not otherwise.

V.

That King County, Washington, embaces a part of the Snoqualmie Timber Reserve and under said Acts of Congress the public schools and roads of said county were entitled to a ratable proportion of said proceeds based upon the proportionate area of said forest reserve in said King County; that the proportion was determined by the State Treasurer from year to year beginning November, 1908, to and including the year 1918; that said State Treasurer remitted to the Treasurer of of King County, the proportionate amount of said fund to which the schools and roads in said county were entitled; that the aggregate amount so remitted during the above

period [4] was the sum of Twenty Thousand One Hundred Six and 07/100 ($20,106.07) Dollars.

VI.

That upon the receipt of the several apportionments mentioned in Paragraph V hereof, the County Treasurer placed a part thereof in the County Road and Bridge Fund of said County and the remainder in the current County School Funds of the several School Districts in said County; the apportionments of said fund between the County Road and Bridge Fund and the County School District funds made by said Treasurer for the year 1908 to 1918, inclusive, is shown in the following table:

Year	Total Received.	Apportioned to Road and Bridge Fund.	Apportioned to County Sch. Fd.
1908,	$367.56	$183.78	183.78
1909,	542.34	all	none
1910,	1334.34	all	none
1911,	2762.14	all	none
1912,	4799.13	all	none
1913,	3256.95	all	none
1914,	3544.88	all	none
1915,	1617.03	all	none
1916,	905.80	452.90	452.90
1917,	1060.01	530.00	530.01
1918,	915.89	457.94	457.95
	20106.07	18481.43	1624.64

That of the total amount received by the County Treasurer from the year 1908 to and including the year 1918, there was placed in the Road and Bridge

fund the sum of Eighteen Thousand Four Hundred Eighty-one and 43/100 ($18,481.43) Dollars, and in the various County School District Funds the sum of Sixteen Hundred Twenty-four and 64/100 ($1624.64) Dollars.

VII.

That the County Commissioners of King County assumed to direct the County Treasurer in the apportionments made as aforesaid from the year 1908 to 1918, inclusive, but said Commissioners were without power or authority to make a division thereof or to exercise any discretionary control over the money so received [5] by the County Treasurer.

In this behalf plaintiff shows to the Court and alleges that the trust created by the aforesaid Acts of Congress required an equal division of said trust funds between the public schools and roads to be expended for their benefit as the legislature might direct; that the legislature of Washington by directing that all of such trust funds be turned over to County Treasurers and that they be expended for the benefit of the public schools and roads, and not otherwise, thereby made such County Treasurers and the respective counties to whom and to which such trust fund was remitted, custodians and trustees of said fund; that said Trustees had no power to apportion to the road fund of the county a greater sum than that apportioned to the school fund and the misappropriation of said fund by the County Treasurer and by the County of King as stated in Paragraph VI hereof, constitute a breach

of the aforesaid trust, whereby the plaintiff and other school districts of said county have been practically excluded from the benefits of said Acts of Congress; that said defendants have caused to be misappropriated in the manner above described the sum of Eight Thousand Four Hundred Twenty-eight and 40/100 ($8,428.40) Dollars, all of which should have been expended for the benefit of the public schools of King County and should not have been placed to the credit of the road and bridge fund thereof.

VIII.

That the actual attendance of pupils in Seattle School District No. 1, also the total actual attendance in all the school districts in King County, from the year 1908 to and including the year 1914, is shown in the table marked Exhibit "A" hereto attached and made a part hereof. [6]

The plaintiff had no knowledge until the month of March, 1916, that the trust funds mentioned in paragraph VI had been received or misappropriated by the defendants.

In consideration whereof, and for as much as the plaintiff is without a speedy or adequate remedy, save in a court of equity, the plaintiff prays that this Honorable Court issue its writ of subpoena in due form of law directed to the said John A. Bennett, as Treasurer of King County, Washington and King County, State of Washington, commanding them at a certain day and under a certain penalty to be therein specified, to appear before this Honorable Court to answer all and singular the matters

and things hereinabove set forth and complained of, but the answers to the amended bill of complaint need not be under oath and answer under oath being hereby expressly waived:

And the plaintiff prays:

1. That the defendants, King County and William A. Gaines as Treasurer of King County, Washington, may be held and adjudged to be custodians and trustees of the moneys remitted as aforesaid by the State Treasurer of Washington to the Treasurer of King County, from the year 1908 to and including the year 1918.

2. That as trustee said defendants be required to render an accounting showing the receipts and disbursements and the disposition of all such moneys as well as the condition of the fund at this date.

3. That the plaintiff, Seattle School District No. 1 may have and recover of and from the defendant, King County, Six Thousand Seven Hundred Eighty-nine and 22/100 ($6,789.22) Dollars its proportionate share according to school attendance of the amount misappropriated by the defendant, King County.

4. That as an alternative to a general judgment against King County, the plaintiff, Seattle School District No. 1 be awarded a decree establishing the trust fund aforesaid and requiring the County of King as Trustee of said fund to make good to said Seattle [7] School District No. 1 the full sum of Six Thousand Seven Hundred Eighty-nine and 22/100 ($6,789.22) Dollars, with interest thereon at six per cent (6%) per annum from the date of the

decree in the manner following: That beginning with the year 1921, the said King County and the Treasurer of King County be directed to transfer to the account of Seattle School District in addition to its lawful proportion of the moneys received from the State Treasurer on account of the sales of timber from the forest reserve, the one-half portion thereof which would otherwise be payable to the road and bridge fund of said county and that said King County and its Treasurer in each and every year thereafter make like disposition of said trust fund until Seattle School District No. 1 shall have received in addition to its regular proportion of said fund the sum of Six Thousand Seven Hundred Eighty-nine and 22/100 ($6,789.22) Dollars with interest as aforesaid.

5. That plaintiff may recover its costs in this suit and that plaintiff may have such other and further relief as the nature and circumstances of the case may require and as to this court may seem just and equitable.

HENRY W. PENNOCK,
Attorney for Plaintiff. [8]

United States of America,
Western District of Washington,
Northern Division,—ss.

Reuben W. Jones, being first duly sworn, on oath deposes and says: That he is Secretary for the plaintiff, Seattle School District No. 1; that he has read the foregoing amended bill of complaint and that the statements and allegations contained in said

amended bill are true.

REUBEN W. JONES.

Subscribed and sworn to before me this 26th day of March, 1921.

[Notary Seal] BERTHA F. BARTEL.

Notary Public in and for the State of Washington, Residing at Seattle.

Copy of within received Mar. 26, 1921.

MALCOLM DOUGLAS,
Prosecuting Attorney. [9]

Exhibit "A."

	Seattle School Dist. No. 1—Actual Attendance.	All School Districts—Actual Attendance.
1908	4,582539	5,751,595
1909	4,798,158	5,677,116
1910	5,363,122	6,746,868
1911	5,764,785	6,945,466
1912	5,887,588	7,211,837
1913	6,160,116	7,652,808
1914	6,704,976	8,364,344

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [10]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and JOHN A. BENNETT, Treasurer of King County, Washington,

Defendants.

Stipulation Substituting Wm. A. Gaines for John A. Bennett as Defendant.

IT IS HEREBY AGREED AND STIPULATED by and between the respective parties hereto, by their attorneys of record, that William A. Gaines, the duly elected, qualified and acting Treasurer of King County and the successor in office of John A. Bennett, formerly Treasurer of King County, may be substituted for the said John A. Bennett as one of the defendants in the above-entitled action.

Dated this 18th day of October, 1920.

HENRY W. PENNOCK,
Attorney for Plaintiff,
FRED C. BROWN,
HOWARD A. HANSON,
Attorneys for Defendants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]

United States District Court, Western District of Washington. Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and JOHN A. BENNETT, Treasurer of King County, Washington,

Defendants.

Motion to Dismiss.

Come now King County and John A. Bennett, Treasurer of King County, defendants above named, and move the Court to dismiss the bill of complaint in the above-entitled action upon the following grounds:

I.

That it appears from the face of said bill of complaint that the said plaintiff has a complete and adequate remedy at law, and that there is no ground for the interposition of a court of equity.

II.

That it appears from the face of said bill of com-

plaint that the Court has no jurisdiction of the subject matter of said action.

III.

That the said bill of complaint does not state facts sufficient to constitute any ground for relief.

IV.

That there is a defect in parties plaintiff in the above-entitled action. [12]

V.

That there is a defect or nonjoinder of parties defendant in the above-entitled action, because the Board of County Commissioners of King County has not been joined as a party defendant.

ALFRED H. LUNDIN,
FRANK P. HELSELL,
Attorneys for Defendants.

Copy of within motion received and due service of same acknowledged this 2d day of Jan. 1919.

HENRY W. PENNOCK,
By ARG,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 29, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [13]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and in Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and JOHN A. BENNETT, Treasurer of King County, Washington,

Defendants.

Supplemental Motion to Dismiss.

Come now King County and William A. Gaines, Treasurer of King County, defendants herein, and supplementing the defendants' motion to dismiss now move the Court to dismiss the bill of complaint in the above-entitled action, upon the following supplemental grounds:

I.

That it appears from the said bill of complaint that the plaintiff has no legal capacity to sue.

II.

That it appears from the face of said complaint that the Court has no jurisdiction of the parties to said action, or either of them.

FRED C. BROWN,
HOWARD A. HANSON,
C. E. CLAYPOOL,
Attorneys for Defendants. [14]

Copy of within motion received and due service of same acknowledged this 24th day of November, 1920.

PENNOCK & GATES,
Per A. BOYD,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 20, 1920. F. M. Harshberger, Clerk. By S. E. Lietch, Deputy. [15]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and in Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and JOHN A. BENNETT, Treasurer of King County, Washington,

Defendants.

Stipulation That Supplemental Motion to Dismiss be Considered as Part of Motion to Dismiss.

IT IS HEREBY AGREED AND STIPULATED by and between the respective parties hereto, by their respective attorneys of record, that defendants' supplemental motion to dismiss may be

considered and determined by the above-entitled court as a part of the motion to dismiss herein.

Dated this 18th day of November, 1920.

HENRY W. PENNOCK,
Attorney for Plaintiff.
FRED C. BROWN,
HOWARD A. HANSON,
C. E. CLAYPOOL,
Attorneys for Defendants.

Due service of the within stipulation acknowledged and receipt of copy thereof admitted this 24th day of Nov. 1920.

PENNOCK & GATES,
Per A. BOYD,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Lietch, Deputy. [16]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

Order Overruling Motion to Dismiss.

This cause came on to be heard on this 11th day of July, 1921, upon the defendants' motion and supplemental motion to dismiss the amended bill of complaint, Henry W. Pennock appearing as counsel for the plaintiff and Howard A. Hanson appearing as counsel for the defendants, upon consideration whereof it is

ORDERED that the motion and supplemental —— of the defendants to dismiss the amend bill of complaint be and the same is hereby overruled; to which ruling the defendants duly excepted and their exceptions are allowed.

Thereupon the defendants, by their counsel, in open court, declined to plead further; and the plaintiff, in open court, moved for the entry of an order that the amended bill of complaint be taken *pro confesso,* which motion the court sustained.

Exception of defts. noted.

Done in open court this 11th day of July, 1921.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [17]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

Stipulation Waiving Provisions of Decree as to Payment of Receipts of Forest Moneys.

IT IS STIPULATED by and between the parties hereto by their respective counsel that defendants' motion to dismiss and supplemental motion to dismiss the bill of complaint herein shall apply to the amended complaint and that the Court having overruled defendants' motion and supplemental motion to dismiss the amend complaint and the defendant having refused to plead further to said amended complaint, and the Court having determined this cause in favor of plaintiff as upon default, the defendants hereby waive any objection or exception to which they might be entitled, or which they might take, to the particular provision of the decree which permits the judgment in favor of the plaintiff to be paid from future receipts from the United States Forest Re-

serve Fund instead of from the County General Fund.

The stipulation shall be without prejudice to the right of the defendant, which is hereby reserved, to make any and every other objection and exception to the decree to which it may be entitled either in law or equity.

Dated this 30th day of March, 1921.

HENRY W. PENNOCK,
Attorney for Plaintiff,
MALCOLM DOUGLAS,
HOWARD C. HANSON,
Attorneys for Defendant. [18]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18½]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiffs,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

Stipulation Waiving Thirty Day Rule.

IT IS STIPULATED, by and between the parties hereto, by their respective counsel, as follows.

For the purpose of expediting the final determination of this cause, the defendants hereby waive the provision of the rule of court requiring thirty days to elapse after the entry of an order that the bill be taken *pro confesso* before the entry of a final decree.

The defendants further acknowledge receipt of a form of final decree, based upon the default of the defendants, containing a provision permitting the judgment in favor of the plaintiff to be paid from future receipts from the Federal Reserve Fund instead of from the County General Fund. The defendants hereby waive any objection or exception to which they might be entitled or which they might take to the particular provision of the decree last above mentioned.

This stipulation shall be without prejudice to the right of the defendants, which is hereby reserved, to make any and every other objection and exception to the decree to which they may be entitled either in law or in equity.

Dated this 11th day of July, 1921.

HENRY W. PENNOCK,
Attorney for Plaintiff.
MALCOLM DOUGLAS,
HOWARD A. HANSON,
Attorneys for Defendants. [19]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [20]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiffs,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

Decree.

This cause came on for final hearing on the 11th day of July, 1921, upon the amended bill of complaint and upon the stipulation of the parties hereinafter referred to, Henry W. Pennock appearing as counsel for plaintiff and Howard A. Hanson appearing as counsel for the defendants.

And the Court having overruled defendants' motion and supplemental motion to dismiss the amended bill of complaint and having ordered that the amended bill of complaint be taken *pro confesso,* and the parties having stipulated for a final decree

on this date, waiving the thirty-day provision of Equity Rule 17, the Court finds as follows:

That each and all of the allegations of the amended bill of complaint have been confessed by the defendants and that the same are true. That by the Acts of Congress approved March 4, 1907, and May 23, 1908, set forth in the amended bill of complaint, a trust was established for the benefit of the public schools and of the public roads in each county of the State of Washington wherein timber had been, or should be, sold from the forest reserves; that it was the intention of Congress in creating the trust that the public schools and the public roads should equally share the benefits of such fund. That the [21] defendant King County, through its officers and agents, in the years 1909 to 1915, both inclusive, caused the entire amount of said trust fund to be appropriated to the public roads of King County, and no part thereof was appropriated for the benefit of the public schools. That said defendant and its officers during said years misappropriated for public road purposes Eight Thousand Four Hundred Twenty-eight and 40/100 Dollars (8,428.40), which under the Acts of Congress should have been expended for the benefit of the public schools of King County. That Seattle School District No. 1 would and should have received as its proportion of the amount so misappropriated, based upon the actual school attendance within said school district, the sum of Six Thousand Seven Hundred Eighty-nine and 22/100 Dollars ($6,789.22). That the plaintiff is entitled to a

judgment against the defendant King County for the last named amount.

WHEREFORE, IT IS ADJUDGED AND DECREED that the plaintiff, Seattle School District No. 1, have and recover of and from the defendant King County the sum of Six Thousand Seven Hundred Eighty-nine and 22/100 Dollars ($6,789.22), with interest from this date at the rate of six per cent per annum, and for the costs of this action.

The Court finds that the defendant William A. Gaines, acting as Treasurer of King County, was not personally responsible for the misappropriation of any of the Forest Reserve Trust Fund and said defendant is retained in this cause and made party to this decree for the purpose of carrying out the final provisions of this decree.

A stipulation of the parties hereto was filed in this cause on the 18th day of April, 1921, and offered in evidence by the plaintiff, by the terms of which the defendants have waived all objections to the following special provisions for the collection of the amount adjudged to be due the plaintiff by this decree, viz.: [22]

It is further ORDERED, ADJUDGED AND DECREED that the county of King and its treasurer and other proper officers, beginning with the year 1921, cause the trust fund derived from the sale of timber from the Federal Timber Reserve in said county to be administered as follows:

The one-half thereof which under the decision of the Court would normally be expended for the public roads shall be applied annually upon the judg-

ment in favor of the plaintiff until such time as the judgment and costs shall have been fully paid. The other one-half of such trust fund, normally to be expended for the public schools, shall not be affected by this order. The judgment entered herein shall be collectible only in the manner above directed and shall not be enforced against the general fund of the County of King, except in the event that the proper county officers shall fail to make payments on the judgment from the trust fund as installments shall be received by the County Treasurer. In the latter case the judgment for the balance remaining due thereon shall be enforceable by the usual process and proceedings applicable to judgments of this court.

To all of which defendants except, which exception is hereby allowed.

Dated July 11, 1921.

JEREMIAH NETERER,
United States District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [23]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

Petition for Appeal.

To the Honorable JEREMIAH NETERER, District Judge:

The above-named King County feeling itself aggrieved by the decree rendered and entered in the above-entitled cause on the 11th day of July, A. D. 1921, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the assignment of errors filed herewith, and it prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such court in such cases made and provided.

Minnesota State Library,
St. Paul, Minn.

And your petitioner further prays that the [24] proper order relating to the security to be required of it be made.

MALCOLM DOUGLAS,
HOWARD A. HANSON,
Attorneys for King County.
431 County-City Building,
Seattle, Washington.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [25]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WM. A. GAINES, Treasurer of King County, Washington,

Defendants.

Order Allowing Appeal.

On motion of Howard A. Hanson, Esq., solicitor and counsel for defendant King County, it is hereby ordered that an appeal to the United States Circuit

Court of Appeals for the Ninth Circuit from the decree heretofore filed and entered herein be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit. It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars ($500.00), the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Dated at Seattle, Washington, this 11th day of July, A. D. 1921.

JEREMIAH NETERER,
Judge. [26]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [27]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

Supersedeas Order.

This cause coming on to be heard this 11th day of July, 1921, upon the application of defendant and appellant King County for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and said appeal having been allowed, it is ordered that the same shall operate as a supersedeas, as provided by law, and the clerk is hereby directed to stay the mandate of the District Court for the Western District of Washington, Northern Division, until the further order of this court.

Dated at Seattle, Washington, this 11th day of July, 1921.

JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [28]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

Assignments of Error.

Now comes the defendant King County in the above-entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above-entitled cause, from the decree made by this Honorable Court on the 11th day of July, 1921.

I.

That the United States District Court for the Western District of Washington, Northern Division, erred in denying the motion interposed by defendant and appellant King County to dismiss the amended bill of complaint filed in the cause.

II.

That the said District Court erred in denying defendant and appellant King County's supplemental motion to dismiss the amended bill of complaint filed in the cause. [29]

III.

That the said District Court erred in entering a decree in said cause in favor of complainant and against defendant and appellant King County.

WHEREFORE, the appellant King County prays that said decree be reversed and that said United States District Court for the Western District of Washington, Northern Division, be ordered to enter a decree reversing the decision of the lower court in said cause.

MALCOLM DOUGLAS,
HOWARD A. HANSON,
Attorneys for Appellant King County.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [30]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WM. A. GAINES, Treasurer of King County, Washington,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, King County, a municipal corporation, as principal, and National Surety Company, a corporation duly organized under and by virtue of the laws of the State of New York and authorized to do surety business in the State of Washington, as surety, obligors, are held and firmly bound unto the above-named Seattle School District No. 1, a municipal corporation of the State of Washington, obligee, in the sum of Five Hundred Dollars ($500.00), to be paid to it, and for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our, successors jointly and severally firmly by these presents.

Sealed with our seals and dated the 11th day of July, 1921.

WHEREAS the above-named principal obligor, defendant, seeks to prosecute its appeal in the United States [31] Circuit Court of Appeals for the Ninth Circuit to reverse the judgment rendered in the above-entitled cause by the United States District Court, for the Western District of Washington, Northern Division,

Now, therefore, the condition of this obligation is such that if the above-named principal obligor, defendant, shall prosecute its appeal to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be

void; otherwise to remain in full force and effect.

KING COUNTY,
By CLAUDE C. RAMSEY,
Chairman of the Board of County Commissioners of King County, Washington.

[Corporate Seal] NATIONAL SURETY COMPANY,
By ROBERT WHYTE,
Attorney in Fact.

[Seal of Comrs. Court]

Attest: D. E. FERGUSON,
Clerk of the Board.
By J. W. Dutton,
Deputy.

The within bond is approved both as to sufficiency and form this 11th day of July, A. D. 1921.

NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 11, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [32]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WM. A. GAINES, Treasurer of King County, Washington,

Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of record on appeal in the above-entitled cause, and include therein the following:

Amended complaint.

Stipulation re defendant Gaines.

Motion to dismiss complaint.

Supplemental motion to dismiss complaint.

Stipulation that supplemental motion to dismiss complaint shall be considered as part of motion to dismiss complaint.

Order overruling motion and supplemental motion to dismiss amended complaint.

Stipulation waiving provision of decree as to payment of receipts, of forest moneys.

Stipulation waiving thirty day rule.

Decree.
Petition on appeal.
Order allowing appeal.
Supersedeas order. [33]
Assignments of error.
Bond on appeal.
This praecipe.

MALCOLM DOUGLAS,
HOWARD A. HANSON,
Attorneys for Defendants and Appellants.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

MALCOLM DOUGLAS,
HOWARD A. HANSON,
Attorneys for Defendants and Appellants.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Jul. 13, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [34]

United States District Court, Western District of Washington, Northern Division.

IN EQUITY—No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WILLIAM A. GAINES, Treasurer of King County, Washington,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record consisting of pages numbered from 1 to 34 inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on appeal herein, from the judgment of said United States District Court for the Western District of Wash-

ington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the [35] above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return 73 folios at 15c	$10.95
Certificate of clerk to transcript of record, 4 folios at 15c	.60
Seal to said certificate	.20

I hereby certify that the above cost for preparing and certifying record amounting to $11.75 has been paid to me by attorneys for appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 15th day of July, 1921.

[Seal] F. M. HARSHBERGER,
Clerk of United States District Court, Western District of Washington. [36]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 160.

SEATTLE SCHOOL DISTRICT No. 1, for Itself and on Behalf of All Other School Districts in King County,

Plaintiff,

vs.

KING COUNTY and WM. A. GAINES, Treasurer of King County, Washington,

Defendants.

Citation on Appeal.

United States of America,—ss.

To Seattle School District No. 1, a Municipal Corporation, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, on the 10th day of August, A. D. 1921, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, from a final decree signed, filed and entered on the 11th day of July, 1921, in that certain suit, being In Equity No. 160, wherein you are the plaintiff and King County is defendant and appellant, to show cause, if any there be, why the decree rendered against the said appellant, as in

said order allowing appeal mentioned, should not be corrected and why [37] justice should not be done to the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, United States District Judge for the Western District of Washington, Northern Division, this 11th day of July, 1921, and of the Independence of the United States the one hundred and forty-fifth.

[Seal] JEREMIAH NETERER,
United States District Judge for the Western District of Washington, Northern Division.

State of Washington,
County of King.

We, the undersigned attorneys of record for the plaintiff in the above-entitled action, hereby acknowledge due service of the above citation, this 11th day of July, A. D. 1921, and enter an appearance for the said plaintiff in the United States Circuit Court of Appeals for the Ninth Circuit.

HENRY W. PENNOCK,
900 Leary Bldg.,
Seattle, Washington,
Attorneys for Plaintiff. [38]

[Endorsed]: No. 160. In District Court of the United States for the Western District of Washington, Northern Division. In Equity. Seattle School District No. 1, for Itself, etc., Plaintiff, vs. King County and *John A. Bennett,* Treasurer of King County, Washington, Defendants. Citation on Appeal. Filed in the United States District

Court, Western District of Washington, Northern Division. July 11, 1921. F. M. Harshberger, Clerk S. E. Leitch, Deputy.

[Endorsed]: No. 3718. United States Circuit Court of Appeals for the Ninth Circuit. King County, Washington, Appellant, vs. Seattle School District No. 1, a Municipal Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed July 19, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Filed August 10, 1921. F. D. Monckton, Clerk.

No. 3718

United States
Circuit Court of Appeals
For the Ninth Circuit.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT NO. 1, a Municipal Corporation,

Appellee.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the September Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the City of Seattle, in the State of Washington, on Tuesday, the twentieth day of September, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable WILLIAM H. HUNT, Circuit Judge; The Honorable CHARLES E. WOLVERTON, District Judge.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Order of Submission.

ORDERED appeal in the above-entitled cause argued by Mr. Howard A. Hanson, counsel for the appellant, and by Mr. Henry W. Pennock, counsel for the appellee, and submitted to the Court for consideration and decision, with leave to counsel for the appellee to file additional authorities.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the ninth day of January, in the year of our Lord one thousand nine hundred and twenty-two. Present: Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF CERTAIN JUDGMENTS AND DECREES.

By direction of the Honorable William B. Gilbert and William H. Hunt, Circuit Judges, and the Honorable Charles E. Wolverton, District Judge, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the clerk, and that a Judgment or Decree be filed and recorded in the minutes of this court in each of the causes in accordance with the opinion filed therein: * * * King County, Washington, Appellant, vs. Seattle School District No. 1, a Municipal Corporation, Appellee. No. 3718.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

MALCOLM DOUGLAS and HOWARD A. HANSON, for Appellant.

HENRY W. PENNOCK, for Appellee.

Opinion U. S. Circuit Court of Appeals.

Before GILBERT and HUNT, Circuit Judges, and WOLVERTON, District Judge.

WOLVERTON, District Judge:

The controversy here grows out of the following situation:

By acts of Congress of March 4, 1907 (34 Stat. 1270), and May 23, 1908 (35 Stat. 260), it is provided that 25 per cent of all money received from each forest reserve shall be paid by the Secretary of the Treasury to the state or territory in which the reserve is situated, "to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated."

By an act of the Washington Legislature (Laws 1907, Chap. 185, p. 406), the State Treasurer is directed to turn over to the county treasurers the amounts of money belonging to the respective counties. By section 2, it is provided:

> "County commissioners of the respective counties to which the money is distributed are hereby authorized and directed to expend said money for the benefit of the public schools and public roads thereof, and not otherwise."

For the years 1909 to 1915, inclusive, the county commissioners of King County, Washington, directed the county treasurer to apportion the entire amount of such funds coming into his hands to the road and bridge fund, to the exclusion of the county school fund, and the county treasurer acted accordingly. Of the acts of the commissioners and the county treasurer in this regard, the plaintiff complains, and claims that the funds should have been apportioned to the road and county school funds in equal amounts. The sufficiency of the bill of complaint was challenged by a motion to dismiss. This was denied by the court below, resulting in a decree for plaintiff.

It may be premised that there is no apparent controversy touching the authority of the school district to sue and be sued. Indeed, by local statute, school districts in the state are constituted bodies corporate, possessing all the usual powers of a corporation for public purposes, and, among others, in name and style, to sue and be sued. § 4423,

1 Remington's 1915 Codes and Statutes of Washington.

Such school districts are regarded as mere arms of the state for the administration of its school system, and it is said that practically all of their functions are therefore governmental. Howard vs. Tacoma School District No. 10, 88 Wash. 167, 170.

The districts, however, are charged with the administration of the school funds entrusted to them by state authority, or to which they are entitled.

Much controversy has developed in the argument and in the briefs of counsel touching the particular style of trust relations existing between the parties, and out of this spring the questions whether the suit was properly instituted and whether a court of equity, and this, a federal court, have jurisdiction of the subject matter of the controversy.

It would be of little avail to discuss the distinction between private and charitable trusts. The one here involved cannot be strictly classed as either. It is a trust, public in its nature, but to be dealt with on like legal principles as pertain to private trusts. The general government has, by grant, apportioned certain funds to the several states or territories in which forest reserves are situated, to be expended as the state or territorial legislature may prescribe, for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated. These funds are transmitted to the state or territory entitled to them, and, under the direction of

the State Legislature of Washington, are turned over to the treasurers of the respective counties to which they are apportionable. The counties thereby become the trustees of the funds, acting through their treasurers, to be dispensed as directed under the grant. The local public, that is, the inhabitants of the school district, constitute the ultimate beneficiaries; but, in so far as the school districts are concerned, they are the immediate *cestuis que trustent* for the expenditure of the funds to which they are entitled. Furthermore, they are entitled, under the law, to have the money paid to them for their administration. Now, the school districts being constituted bodies corporate, with power to sue and be sued, what need is there for the interposition of the Attorney General to enable them to maintain suit to recover the funds from the trustee, so that they may administer them for the public benefit, as the law requires them to do.

In a general sense, if the Attorney General possesses and peculiar province in this country, it is to protect and safeguard the rights of the general public where there is no one in particular suffering injury more than another. But, as is said by the Court in People vs. Ingersoll, 58 N. Y. 14:

> "Doubtless the prerogatives of the Crown, except as affected by constitutional limitations, exist in the people as sovereign, but to what extent the exercise of this prerogative is committed to the public officials, either by the leg-

islature or the common law, is a question worthy of grave consideration, and not to be lightly decided, and should only be determined when necessary to a judgment and decision. * * * If there were no other remedy for a great wrong, and public justice and individual rights were likely to suffer for want of a prosecutor capable of pursuing the wrongdoer and redressing the wrong, the courts would struggle hard to find authority for the Attorney General to intervene in the name of the people."

But another principle is involved, which is, that the function of the Attorney General is to represent the public, the entire community, and not a limited portion thereof. An English case of much analogy to the present, and illustrative of the principle, is cited, namely, Attorney General vs. Garner and Another (1907), 2 K. B. 480. The suit was one instituted by the Attorney General on the relation of the Spaulding Rural District Council, to restrain defendants from depasturing certain lands. It was found that the Parish Council was the owner of the right of property as trustee for the parishoners, and not the Rural District Council, the relator, and the Court says:

"The question therefore arises whether in these circumstances the Attorney General can maintain the action, and obtain an injunction in respect of the wrongful acts of the defendants."

Answering the question, the Court says:

"The difficulty in the present case is to ascertain whether the Attorney General can interfere in a case where the interests involved are those, not of the whole community, but of a limited portion of it, such as the inhabitants of the parish . . . In my opinion it follows from these authorities that in the circumstances of this case the Parish Council might have maintained the action, and that if the Parish Council had been plaintiffs it would not have been necessary to join the Attorney General. As to that I have no doubt at all, but it does not decide the whole matter, for there remains the question whether the Attorney General may not be joined as a party to an action in a case in which it is not absolutely necessary that he should be joined. I find an almost complete absence of authority on that point, but, forming the best judgment that I can, it seems to me that the rights, which the Attorney General intervenes in order to protect, as representing the Crown, in the capacity, as it is stated in some of the cases, of *parens patriae*, must be rights of the community in general, and not rights of a limited portion of his Majesty's subjects, especially when the limited portion in question, the inhabitants of a parish, have representatives who can bring the action."

Here, as in the English case, we have a body

corporate, so constituted by statute, with power and authority to redress the wrong which it is alleged the particular community has suffered. There exists, therefore, in the present situation no occasion for the Attorney General's interposition for the relief of the general public.

Nor do we think this a matter between two sovereignties, that is, between the general government and the state of Washington, as is illustrated by the cases of Alabama vs. Schmidt, 232 U. S. 168; Emigrant Co. vs. County of Wright, 97 U. S. 339; and Emigrant Co. vs. County of Adams, 100 U. S. 61. The funds have passed from the Government, not only to the state, but into the hands of the county treasurers charged with the trust which Congress has impressed upon them. It is essentially a matter between the county and the school district, and presents the question whether the county commissioners may dispose of the funds in any other way than that in which Congress has directed that they shall be expended. The state has merely directed that the county commissioners shall expend the money in accordance with the terms of the grant or appropriation of the funds to the state.

The case is clearly one for equitable jurisdiction, as it involves a trust and alleged maladministration of trust funds.

It is further presented that this Court has no jurisdiction in the premises, as it is insisted that no federal question is involved. In this, we are

unable to concur. The very crux of the controversy depends upon a construction of the congressional grant or appropriation; that is, whether shall the funds be expended in equal shares for road and school purposes, or is it a matter discretionary with the state authorities? This undoubtedly presents a federal question. Such a question "is involved not merely when the construction of a federal statute incidentally arises, but when the case necessarily turns upon the construction of the federal laws, as when the plaintiff would be defeated by one construction, or successful by another." Hughes' Federal Procedure (2 ed.) 235.

The question which pertains to the proper construction of the grant remains. The funds are to be expended "for the benefit of the public schools and public roads." The use of the conjunctve would seem to indicate that at least not all of such funds should be expended for the one purpose or the other. But we concur with the Court below that the language should receive a like construction to that which obtains with the respect to wills, gifts and deeds, where property is bestowed upon or passed to two or more persons without defining the proportion in which they shall take; the presumption being that they shall take in equal portions.

See Lee vs. Wysong, 128 Fed. 833; Markoe vs. Wakeman, 107 Ill. 251, 261; Keuper vs. Mette, 239 Ill. 586; Gerting vs. Wells, 103 Md. 624; Campau vs. Campau, 44 Mich. 31; Hill vs. Reiner, 167 Mich. 400;

Bennett vs. Quinlan, 47 Mont. 247; Justice vs. Stringer, 160 Ky. 354; In re Helling, 147 N. Y. Supp. 799; In re Conner's Will, 39 N. Y. Supp. 900.

This results in affirmation of the decree appealed from, and such will be the order of the Court.

[Endorsed]: Opinion. Filed January 9, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Northern Division and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the de-

cree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered January 9, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Petition for Appeal.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The above-named King County, feeling itself aggrieved by the decision rendered and entered in the above-entitled cause on the 9th day of January, A. D. 1922, does hereby appeal from said decision

to the Supreme Court of the United States for the reasons set forth in the assignments of error filed herewith and it prays that its appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decision was based, duly authenticated be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And your petitioner further prays that the proper order relating to the security to be required of it be made.

MALCOLM DOUGLAS,
HOWARD A. HANSON,
Solicitors for Appellant.
431 County-City Building,
Seattle, Washington.

[Endorsed]: Petition for Appeal to Supreme Court U. S. Filed February 27, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Assignments of Error.

Now comes the appellant King County in the above-entitled cause, and files the following assignments of error upon which it will rely upon its prosecution of the appeal in the above-entitled cause, from the decision made by this Honorable Court on the 9th day of January, 1922, affirming the decree of the District Court of the United States for the Western District of Washington, Northern Division, made and entered on the 11th day of July, 1921.

I.

That the United States Circuit Court of Appeals for the Ninth Circuit erred in affirming the decree made and entered on the 11th day of July, 1921, by the District Court of the United States for the Western District of Washington, Northern Division.

II.

That the United States Circuit Court of Appeals for the Ninth Circuit, erred in not reversing the decree of the United States District Court of Washington, Northern Division, aforesaid, on account of error of the United States District Court for the Western District of Washington, Northern Division, in denying the motion interposed by defendant and appellant King County to dismiss the amended bill of complaint in the cause.

III.

That the United States Circuit Court of Appeals for the Ninth Circuit erred in not reversing the decree of the United States District Court of Washington, Northern Division, aforesaid, on account of error of the United States District Court for the Western District of Washington, Northern Division, in denying the supplemental motion interposed by defendant and appellant King County to dismiss the amended bill of complaint filed in the cause.

WHEREFORE, the appellant King County prays that said decree be reversed and that said United States Circuit Court of Appeals for the Ninth Circuit be ordered to enter a decision reversing the decree of the District Court of the United States for the Western District of Washington, Northern Division in said cause.

MALCOLM DOUGLAS,
HOWARD A. HANSON,
Solicitors for Appellant.

[Endorsed]: Assignment of Errors on Appeal to Supreme Court U. S. Filed February 27, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Stipulation for Supersedeas Order.

IT IS STIPULATED AND AGREED by and between the parties hereto that the appeal of King County to the United States Supreme Court from the decision of the above-entitled court rendered on the 9th day of January, A. D. 1922, shall operate as a supersedeas and that the bond on appeal may be considered as sufficient for the purpose of supersedeas.

Dated at Seattle, Washington, this 23d day of February, 1922.

MALCOLM DOUGLAS,
HOWARD A. HANSON,
Solicitors for King County.
HENRY W. PENNOCK,
Solicitor for School District No. 1.

[Endorsed]: Stipulation for Supersedeas Order. Filed February 27, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Order Allowing Appeal.

On motion of Howard A. Hanson, Esq., Solicitor and counsel for appellant King County, it is hereby ordered that an appeal to the Supreme Court of the United States from the decision heretofore filed and entered herein, affirming a decree of the United States District Court, Western Division of Washington, Northern Division, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars ($500),

the same to act as a Supersedeas Bond and also as a bond for costs and damages on appeal.

Dated at San Francisco, California, this 27th day of February, A. D. 1922.

W. H. HUNT,
U. S. Circuit Judge.

[Endorsed]: Order Allowing Appeal to Supreme Court U. S. Filed February 27, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Supersedeas Order.

This cause coming on to be heard on this 27th day of February, A. D. 1922, upon the application of appellant King County, for an appeal to the Supreme Court of the United States, and said appeal having been allowed and the parties having stipulated with respect to a supersedeas order, it is ORDERED that the appeal shall operate as a super-

sedeas, as provided by law, and the clerk is hereby directed to stay the mandate of the District Court for the Western District of Washington, Northern Division, and the mandate of the United States Circuit Court of Appeals for the Ninth Circuit, until the further order of this court.

Dated at San Francisco, California, this 27th day of February, A. D. 1922.

W. H. HUNT,
U. S. Circuit Judge.

[Endorsed]. Supersedeas Order. Filed February 27, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That, we, King County, a municipal corporation,

as principal, and National Surety Company, a corporation duly organized under and by virtue of the laws of the State of New York and authorized to do surety business in the State of Washington, as surety, obligors, are held and firmly bound unto the above-named Seattle School District No. 1, a municipal corporation of the State of Washington, obligee, in the sum of Five Hundred Dollars ($500.00), to be paid to it, and for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our successors jointly and severally firmly by these presents.

Sealed with our seals and dated the 24th day of February, A. D. 1922.

WHEREAS the above-named principal obligor, appellant, seeks to prosecute its appeal in the Supreme Court of the United States to reverse the decision rendered in the above-entitled cause on the 9th day of January, 1922, affirming the decree of the District Court of the United States for the Western District of Washington, Northern Division, made and entered on the 11th day of July, 1921,—

NOW, THEREFORE, the condition of this obligation is such that if the above-named principal obligor, appellant, shall prosecute its appeal to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall

be void; otherwise to remain in full force and effect.

KING COUNTY,
By CLAUDE C. RAMSAY,
Chairman of the Board of County Commissioners of King County, Washington.

[Seal] D. E. FERGUSON,
Clerk of the Board.
By J. W. DUTTON,
Deputy.

NATIONAL SURETY COMPANY.
[Seal] By ROBERT WHYTE,
Attorney in Fact.

The within bond is approved both as to sufficiency and form this 27th day of February, 1922.

W. H. HUNT,
U. S. Circuit Judge.

[Endorsed]: Bond on Appeal to Supreme Court U. S. Filed February 27, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,
Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,
Appellee.

Acknowledgment of Service.

We, the undersigned attorney of record for the appellee in the above-entitled action, hereby acknowledge due service this —— day of February, 1922, copies of the following papers in said action relating to the appeal to the Supreme Court of the United States:

Petition for Appeal.
Order Allowing Appeal.
Stipulation re Supersedeas Order.
Supersedeas Order.
Assignments of Error.
Bond on Appeal.

HENRY W. PENNOCK,
Solicitor for Appellee.

900 Leary Bldg.,
Seattle, Washington.

[Endorsed]: Acknowledgment of Service. Filed February 27, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record Upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-four (64) pages, numbered from and including 1 to and including 64, to be a full, true and correct copy of the record under Rule 8 of the Supreme Court of the United States, in the above-entitled cause, including the Assignment of Errors on Appeal to the Supreme Court of the United States, including the opinion filed in the said Circuit Court of Appeals in the above-entitled case, as the originals thereof remain on file and appear of record in my office, and that the same constitutes the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled cause.

ATTEST my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 13th day of March, A. D. 1922.

[Seal] F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,

Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,

Appellee.

Citation on Appeal.

United States of America,—ss.

To Seattle School District No. 1, a Municipal Corporation, GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 28th day of April, 1922, pursuant to an order allowing an appeal filed and entered in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, from a final decision made and entered on the 9th day of January, 1922, in that certain appeal, being Cause No. 3718, wherein you are the appellee and King County is appellant, to show cause, if any there be, why the decision of the said United States Circuit Court of Appeals for the Ninth Circuit, affirming the decree rendered against the said appellant as in said order allowing appeal mentioned,

should not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. HUNT, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 27th day of February, 1922, and of the Independence of the United States the one hundred and forty-sixth.

W. H. HUNT,
Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Citation on Appeal to Supreme Court U. S. Filed March 6, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3718.

KING COUNTY, WASHINGTON,
Appellant,

vs.

SEATTLE SCHOOL DISTRICT No. 1, a Municipal Corporation,
Appellee.

Acknowledgment of Service.

The undersigned, attorney of record for the appellee in the above-entitled action, hereby acknowledges due service this 3d day of March, 1922, of the

citation on appeal to the Supreme Court of the United States.

HENRY W. PENNOCK,
Solicitor for Appellee.

900 Leary Building,
Seattle, Washington.

[Endorsed]: Acknowledgment of Service of Citation on Appeal to Supreme Court U. S. Filed March 6, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.